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Rochester NY 14650-2201

In re Application of
Michael J. PIATT, et al.
Application No. 09/597,437
Filed: October 18, 2004
For: **COLOR TABLE LEVEL RESERVATION**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed October 18, 2004, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On February 24, 2004, a Notice of Allowance and Issue Fee Due was mailed in the subject application. A response from Applicants was not received. On August 18, 2004 a Notice of Abandonment was mailed.

Petitioner alleges that the Notice of Allowance of February 24, 2004 was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the application file finds no irregularity in the mailing of the Notice of Allowance since it was mailed to the address of record at that time.

Petitioner argues that an associate power of attorney and change of address was filed March 24, 2004. The power of attorney and change of address has been received and made of record in the file.

It is noted, that the submitted docket records and statements appear to be based on failure to receive the Notice of Allowance at the new correspondence address of record. It is further noted that the change of address was filed subsequent to the mailing of the Notice of Allowance.

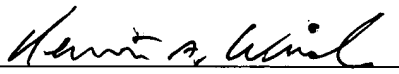
37 C.F.R. § 1.33 states:

(a) The applicant, the assignee(s) of the entire interest (see §§ 3.71 and 3.73) or an attorney or agent of record (see §1.34(b)) may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the application will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant, so long as a post office address has been furnished in the application. Double correspondence with an applicant and his attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent be made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

The Notice of Allowance was sent to the address of record at the time of mailing in accordance with the rule as set forth above. Petitioner has not established failure to receive the Notice of Allowance at the correspondence address of record at the time of mailing thereof.

For the above reasons, the petition is **DENIED.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include evidence of failure to receive the Notice of Allowance at the address of record at the time of mailing. Alternatively, petitioner may want to consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).


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